

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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JERMAINE A. HAMPTON,

Plaintiff,

v.

Case No. 20-C-896

JAMES MUENCHOW, et al.,

Defendants.

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**SCREENING ORDER**

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Plaintiff, who is currently serving a state prison sentence at Waupun Correctional Institution and representing himself, filed a complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the court on Plaintiff's motion for leave to proceed without prepaying the full filing fee and to screen the complaint. Plaintiff has also filed two motions to amend his complaint. Dkt. Nos. 9 and 16. The court will grant his motions for leave to amend and proceed to screen the most recently filed complaint, Dkt. No. 16.

**MOTION TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE**

Plaintiff has requested leave to proceed without prepayment of the full filing fee (*in forma pauperis*). A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. § 1915(b)(1). Plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2), and has been assessed and paid an initial partial filing fee of \$6.79. Plaintiff's motion for leave to proceed without prepaying the filing fee will be granted.

## SCREENING OF THE COMPLAINT

The court has a duty to review any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity, and dismiss any complaint or portion thereof if the prisoner has raised any claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). In screening a complaint, I must determine whether the complaint complies with the Federal Rules of Civil Procedure and states at least plausible claims for which relief may be granted. To state a cognizable claim under the federal notice pleading system, Plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). It must be at least sufficient to provide notice to each defendant of what he or she is accused of doing, as well as when and where the alleged actions or inactions occurred, and the nature and extent of any damage or injury the actions or inactions caused.

A complaint must contain sufficient factual matter “that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “The pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting *Twombly*, 550 U.S. at 555). “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged.” *Id.* at 556. “[T]he complaint’s allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555 (internal quotations omitted).

### **THE COURT’S ANALYSIS**

“To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that he or she was deprived of a right secured by the Constitution or the laws of the United States, and that this deprivation occurred at the hands of a person or persons acting under the color of state law.” *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)).

Plaintiff’s complaint violates Rule 8(a)(2) of the Federal Rules of Civil Procedure and will therefore be dismissed. The complaint does not include “a short plain statement of the claim showing that the pleader is entitled to relief,” as the rule requires. Fed. R. Civ. P. 8(a)(2). Instead, it spans 30 pages and names 22 different defendants, describing events all allegedly stemming from Plaintiff’s receipt of a flu shot on March 7, 2017. Plaintiff believes this flu shot caused him disabilities, including adhesive capsulitis in his left shoulder, axial spondylarthritis in his spinal cord, neural foraminal stenosis of the cervical spine, paresthesia, mild carpal tunnel syndrome in both his arms and hands, Vitamin D deficiency, and spinal arthritis. However, Plaintiff’s complaint also attempts to incorporate allegations that a prison official at Waupun retaliated against him because he refused to leave segregation for 15 months and a separate retaliation claim against a different defendant that Plaintiff was refused a blood draw on October 25, 2017, because of a verbal altercation arising out of Plaintiff’s refusal to leave segregation. Furthermore, Plaintiff claims that James Muenchow intentionally failed to send him an acknowledgment letter with respect to his internal complaints to deliberately frustrate Plaintiff’s efforts to exhaust his claims. At the same time, Plaintiff also appears to include allegations against defendants that are incomplete and fail to advance any viable claim. For example, he names APNP Mary Moore as a

defendant who he saw one time (as of filing the complaint) and who he says was vague and had no idea on how to treat him. While Plaintiff's complaint does not provide a short, plain statement of his claim, incomplete or futile allegations also do not advance any viable claim. *See George v. Smith*, 507 F.3d 605, 608 (7th Cir. 2007) (noting that plaintiffs "must give enough detail to illuminate the nature of the claim and allow defendants to respond").

As instructed by the Seventh Circuit Court of Appeals, under the controlling principle of Rule 18(a) of the Federal Rules of Civil Procedure, "[u]nrelated claims against different defendants belong in different suits" so as to prevent prisoners from dodging the fee payment or three strikes provisions in the Prison Litigation Reform Act. *Id.* at 607. Specifically, Rule 18(a) provides that "[a] party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternate claims, as many claims as it has against an opposing party." Fed. R. Civ. P. 18(a). Under this rule, "multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George*, 507 F.3d at 607.

Moreover, the court in *George* reminded district courts that Rule 20 of the Federal Rules of Civil Procedure applies as much to prisoner cases as it does to any other case. *Id.* Under Rule 20, joinder of multiple defendants into one action is proper only if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20.

The court finds that the complaint violates Rules 18 and 20 insofar as it advances unrelated claims against multiple defendants. The *George* court instructed that such "buckshot complaints" should be "rejected." 507 F.3d at 607. Therefore, the court will dismiss the original complaint

submitted on June 15, 2020, and the amended complaints filed on June 24, 2020, and July 13, 2020. If the plaintiff wishes to proceed, he must file an amended complaint curing the deficiencies in the original complaint as described herein. An amended complaint must be filed on or before **August 28, 2020**. Failure to file an amended complaint within this time period may result in dismissal of this action.

The plaintiff is advised that the amended complaint must bear the docket number assigned to this case and must be labeled “Amended Complaint.” The amended complaint supersedes the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056 (7th Cir. 1998). In *Duda*, the appellate court emphasized that in such instances, the “prior pleading is in effect withdrawn as to all matters not restated in the amended pleading.” *Id.* at 1057 (citation omitted). If the amended complaint is received, it will become the operative complaint in this action, and the court will screen it in accordance with 28 U.S.C. § 1915A.

Further, Plaintiff appears to be advancing claims under a theory of supervisory liability that is not permitted under 42 U.S.C. § 1983. Section 1983 “creates a cause of action based on personal liability and predicated upon fault; thus liability does not attach unless the individual defendant caused or participated in a constitutional violation.” *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996). Moreover, the doctrine of respondeat superior (supervisory liability) does not apply to actions filed under 42 U.S.C. § 1983. *See Pacelli v. DeVito*, 972 F.2d 871, 877 (7th Cir. 1992). Section 1983 does not create collective or vicarious responsibility. *Id.* Thus, with respect to any claim or claims advanced in his amended complaint, Plaintiff must identify the individual defendants and specify the manner in which they caused or participated in the alleged violations of his constitutional rights.

Finally, Plaintiff has filed a motion for a preliminary injunction and temporary restraining order and an order for the defendants to show cause. Dkt. No. 15. The United States Supreme Court has recognized that “[a] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (citations omitted). Before this court will grant such relief, a plaintiff must show that (1) he has “a reasonable likelihood of success on the merits; (2) no adequate remedy at law exists; (3) [he] will suffer irreparable harm which, absent injunctive relief, outweighs the irreparable harm the [defendants] will suffer if the injunction is granted; and (4) the injunction will not harm the public interest.” *Goodman v. Ill. Dep’t of Fin. & Professional Regulation*, 430 F.3d 432, 437 (7th Cir. 2005). Plaintiff’s motion contains no argument, however, as to why preliminary injunctive relief is appropriate in these circumstances. His motion for a preliminary injunction and temporary restraining order is therefore denied.

**IT IS THEREFORE ORDERED** that Plaintiff’s motion for leave to proceed without prepaying the full filing fee (Dkt. No. 8) is **GRANTED**.

**IT IS FURTHER ORDERED** that the complaints submitted on June 15, 2020, and the amended complaints filed on June 24, 2020, and July 13, 2020, be and the same are **DISMISSED**.

**IT IS FURTHER ORDERED** that Plaintiff’s motion for a preliminary injunction and temporary restraining order (Dkt. No. 15) is **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff is directed to file an amended complaint on or before **August 28, 2020**, which contains only related claims in accordance with this Order.

**IT IS FURTHER ORDERED** that if the plaintiff does not file an amended complaint by **August 28, 2020** that complies with the requirements of Rules 18 and 20 of the Federal Rules of Civil Procedure, this action will be dismissed for failure to prosecute.

**IT IS FURTHER ORDERED** that the Clerk's Office mail Plaintiff a blank prisoner complaint form and a copy of the guide entitled "Guide to Filing Prisoner Complaints Without a Lawyer in the United States District Court for the Eastern District of Wisconsin," along with this order.

**IT IS FURTHER ORDERED** that the agency having custody of the prisoner shall collect from his institution trust account the \$343.21 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If the plaintiff is transferred to another institution, the transferring institution shall forward a copy of this Order along with the plaintiff's remaining balance to the receiving institution.

**IT IS FURTHER ORDERED** that copies of this Order be sent to the officer in charge of the agency where the inmate is confined.

**IT IS FURTHER ORDERED** that, pursuant to the Prisoner E-Filing Program, the plaintiff shall submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the Court. The Prisoner E-Filing Program is in effect at Columbia Correctional Institution, Dodge Correctional Institution, Green Bay Correctional Institution, Oshkosh Correctional Institution, Waupun Correctional Institution, and Wisconsin Secure Program Facility.

If the plaintiff is no longer incarcerated at a Prisoner E-Filing Program institution, he will be required to submit all correspondence and legal material to:

Honorable William C. Griesbach  
c/o Office of the Clerk  
United States District Court  
Eastern District of Wisconsin  
125 S. Jefferson Street, Suite 102  
Green Bay, WI 54301

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

The plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Green Bay, Wisconsin this 4th day of August, 2020.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge